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No. _____

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IN THE

Supreme Court of the United States

October Term 1980

THE PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

PATRICK STEVEN W.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION FOUR

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QUESTIONS PRESENTED

1. DID THE CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION FOUR, COMPLY WITH THE WRIT OF CERTIORARI ISSUED BY THIS COURT IN THIS CASE?

2. IN A SITUATION WHERE A JUVENILE, ACCUSED OF MURDERING HIS FATHER, STATES THAT HE DOES NOT WANT TO SEE EITHER HIS MOTHER OR A LAWYER, AND WHERE THE JUVENILE HAS BEEN GIVEN AND UNDERSTANDS THE MIRANDA ADMONITIONS, MUST THE CONFESSION NEVERTHELESS BE SUPPRESSED SOLELY BECAUSE OF THE FAILURE OF THE POLICE TO ALLOW THE JUVENILE"S GRAND-PARENTS TO TALK WITH HIM PRIOR TO THE COMMENCEMENT OF QUESTIONING?

3. EVEN IF SUCH A RULE DOES EXIST, CAN IT BE APPLIED TO A CASE WHEREIN THE OFFICERS QUESTIONING THE JUVENILE ARE TOTALLY UNAWARE OF THE REQUEST OF THE GRANDPARENTS?

4. IS SPEAKING TO AN ADULT RELATIVE THE NECESSARY PREREQUISITE OF A VALID JUVENILE CONFESSION?

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1980

THE STATE OF CALIFORNIA,

Petitioner,

v.

PATRICK STEVEN W.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE CALIFORNIA COURT OF APPEAL,
SECOND APPELLATE DISTRICT, DIVISION FOUR

Petitioner, the State of California, respectfully prays that a writ of certiorari be issued to review the judgment and opinion of the California Court of Appeal, Second Appellate District, Division Four entered in this proceeding April 15, 1980, reversing a judgment adjudicating respondent to be a ward of the juvenile court and committing him to the California Youth Authority for having committed murder in violation of California Penal Code, section 187.

OPINIONS BELOW

The original opinion of the Court of Appeal, Second Appellate District, Division Four is reported as In re Patrick W. (1978) 84 Cal.App.3d 520. A copy of that opinion appears as Appendix A to this petition. The order of the California Supreme Court issued on October 25, 1978, refusing to grant a hearing in this case appears as Appendix B to this petition.

On June 25, 1979, this Court granted petitioner's petition for a writ of certiorari. The judgment was vacated and the case remanded for further consideration in light of Fare v. Michael C. (1979) 442 U.S. 707. (California v. P.S.W. (1979) 443 U.S. 902.)

On April 25, 1980, the California Court of Appeal, in a published opinion reported at 104 Cal.App.3d 615, again reversed the lower court's order sustaining the petition. A copy of that opinion appears as Appendix C to this petition. On May 1, 1980, in a published order, the Court of Appeal denied petitioner's petition for a rehearing. A copy of that order appears as Appendix D. On June 12, 1980, the California Supreme court refused to grant a hearing in this case. A copy of the order appears as Appendix E to this petition.

JURISDICTION

Petitioner invokes the jurisdiction of this Court under Title 28, United States Code, section 1257(3) to

review a judgment of the California Court of Appeal, Second Appellate District, Division Four which was entered on April 25, 1980. The California Supreme Court denied a hearing in this case on June 12, 1980. The present petition for writ of certiorari is filed within the required 60 day period following entry of final judgment. The judgment of the Court of Appeal became final for purposes of this Court with the denial of the hearing by the California Supreme Court on June 12, 1980. (Market Street Railroad Co. v. Railroad Commission (1944) 324 U.S. 548, 550-552.) Thus, the instant judgment is a final decision rendered by the highest court of the State of California interpreting rights under the United States Constitution.

QUESTIONS PRESENTED

1. Did the California Court of Appeal, Second Appellate District, Division Four, comply with the writ of certiorari issued by this Court in this case?

2. In a situation where a juvenile, accused of murdering his father, states that he does not want to see either his mother or a lawyer, and where the juvenile has been given and understands the Miranda admonitions, must the confession nevertheless be suppressed solely because of the failure of the police to allow the juvenile's grandparents to talk with him prior to the commencement of questioning?

3. Even if such a rule does exist, can it be applied to a case

wherein the officers questioning the juvenile are totally unaware of the request of the grandparents?

4. Is speaking to an adult relative the necessary prerequisite of a valid juvenile confession?

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

United States Constitution, Amendment VI:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial

jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

United States Constitution, Amendment XIV, in relevant part:

"SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to act any person within its jurisdiction the equal protection of the laws.

. . ."

STATUTES INVOLVED

California Penal Code, section 26 in relevant part:

"All persons are capable of committing crimes except those belonging to the following classes:

"One. Children under the age of fourteen, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness."

California Penal Code, section 187 in relevant part:

"(a) Murder is the unlawful killing of a human being, or a fetus, with malice aforethought.

California Welfare and Institutions Code, section 602:

"Any person who is under the age of 18 years when he violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which, may adjudge such person to be a ward of the court."

STATEMENT OF THE CASE

A. Statement of the Proceedings

Respondent is a minor who was committed to the California Youth Authority as a ward of the Superior Court of the State of California in and for the County of Los Angeles on August 12, 1977, following the juvenile court's finding under California Welfare and Institutions Code, section 602 that respondent had murdered his stepfather in violation of California Penal Code, section 187.

On September 1, 1978, the Court of Appeal of the State of California, Second Appellate District, Division Four, reversed the judgment in a unanimous opinion. (See Appen. A.)

Petitioner's Application to the California Supreme Court for a hearing was denied on October 25, 1978. (See Appen. B.) Petitioner's petition for a writ of certiorari was granted by this Court on June 25, 1979. The case was vacated and remanded for further consideration (see California v. P.S.W., supra, (1979) 443 U.S. 902).

On April 25, 1980, the California Court of Appeal again reversed the judgment of the trial court. (See Appen. C.) On May 1, 1980, the Court of Appeal denied petitioner's petition for a rehearing. (See Appen. D.) On June 12, 1980, the California Supreme Court refused to grant a hearing in this case. (See Appen. E.)

On motion of petitioner, the California Court of Appeal, Second Appellate District, Division Four, stayed issuance of the remittitur in this case pending action by the United States Supreme Court on this petition for writ of certiorari.

B. Statement of Facts Adduced at the Juvenile Court Adjudication Hearing

On January 21, 1973, Bonnie Sue Bullis and her husband, Edward, were married. (RT 4, 6.)1/ Mrs. Bullis had two children from a prior marriage, Patrick and Deanna. (RT 6, 94.) Mrs. Bullis worked in a bird store. (RT 167, 265-266.) Edward Bullis was a police officer for the Los Angeles Police Department. (RT 45, 170.) In February, 1977, they lived at 5049 Escondido Canyon Road, Acton, California. (RT 3.)

Edward Bullis and his stepson Patrick did not get along very well, and they often quarreled. (RT 6, 114.) On Tuesday, February 22, 1977, Edward and Patrick got into an argument over Patrick's treatment of his sister, Deanna. (RT 94-99.) During the argument Edward apparently choked respondent into unconsciousness. (RT 99, 107.)

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1. "RT" refers to the "Reporter's Transcript" of the trial court proceedings and which was included as part of the record before the California Court of Appeal.

Respondent decided he was going to kill his stepfather and on Wednesday, the 23rd of February, he got ready but "chickened out" before his father came home. (RT 95, 100.) The next day, Thursday, February 24, 1977, around noon, respondent took his father's 30.06 rifle from under his parents' bed. (RT 95; Peo. exh. 12, p. 6.) Since the gun was unloaded, respondent took some ammunition from the bedroom and loaded the gun. (Peo. exh. 12, p. 6.) Respondent took a practice shot in the backyard while waiting for his father to come home from work. (Ibid. at 7.) Respondent told his sister to start packing food and clothing and blankets that the two of them would need after the killing. (RT 95.) Respondent had his sister look outside and tell him when his stepfather arrived home and when he was coming through the gate. (RT 97.)

Around 5:30 p.m., the victim arrived home, checked the mail box, opened the gate, drove his van up, closed the gate and pulled in. (Peo. exh. 12, p. 4.) Respondent had the rifle ready and leaning on a chair. (Id., at p. 5.) When the victim began to open a sliding door leading into the house, respondent shot him, aiming at the area around the stomach. (Id., at p. 7.) Respondent then went outside near the body and shot at it two more times. (Id., at p. 8.) The victim died as a result of massive hemorrhage as a consequence of the gunshot wound to the head. (RT 1-2.)

Respondent went through Edward's clothing, taking some $551 from

the decedent's wallet, as well as his service revolver. (Id., at pp. 9, 12.) Respondent then began to drag the body into the backyard but this proved very difficult. He tied a rope from the body to the van and used the van to drag the body to a hole in the backyard. (Id., at p. 9.) Respondent then buried the body. (Id., at pp. 9-10.) Respondent and his sister took the suitcases Deanna had packed and left. (RT 95; Peo. exh. 12, p. 10.)2/

Respondent and his sister were hitchhiking along the Los Angeles Highway, Route 14. Mr. David Trout, principal of the Agua Dulce School had gotten a report of two possible truants hitchhiking along the road. He drove along the highway and saw respondent and his sister. (RT 15-16.) Mr. Trout asked who they were since they had just started attending his school and he did not know them from firsthand experience. (RT 16.) Respondent then asked who Trout was and why he was concerned about them. Mr. Trout explained who he was and said he had heard they were not in school. (RT 16-17.) Respondent and his sister then identified themselves. Trout said he would take them back to the school.

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2. Most of the material contained in this and the preceding two paragraphs comes not from actual in-court testimony, but from the contents of respondent's confession (Peo. exh. 12), which was admitted into evidence by the trial court. (RT 88-89.) This exhibit was also before the Court of Appeal.

Patrick was reluctant to get in the car and said he could not tell Mr. Trout why. Trout assumed it had something to do with a truancy problem and offered to help solve any problems respondent had. (RT 18.) Finally, respondent said he could not go back. He had shot his father and he could not face his mother. (RT 17, 18, 19.) Trout convinced respondent it was best to go back and get it straightened out. Moreover, Trout offered to help. (RT 18-19.) Respondent then got into the car. (RT 18.) On the way back, respondent talked freely and said he knew he had killed his stepfather because he had buried his stepfather's body. (RT 19.) Trout took respondent and his sister back to Agua Dulce School, called the authorities, and later turned them over to sheriff's deputies. (RT 20.) The deputies advised respondent of his rights. (Peo. exh. 12, p. 12; RT 64-67.)

Later that evening respondent was interviewed by two Los Angeles County Sheriff's Officers Villareal and Rasure. (RT 41, 80-81.) The officers carefully explained all of respondent's rights and then had respondent state the rights in his own words to be certain he comprehended them. (See Peo. exh. 12, p. 1.) Then the officer asked:

"[By Officer Villareal]

"Q. Do you want to talk about the case?

"A. [By appellant] I guess, if it's gonna be best.

"Q. Well, that's up - up to you, you know, you have your rights to be protected, you know, you have the rights and so on, and also that - that uh, the reason we explain these things to you is so you know what your rights are.

"A. Un-huh.

"Q. So, and that's why we ask you that if you can (unintelligible) that we don't want to force you or coerce you in any form or way.

"A. Yeah.

"Q. You - you understand that?

"A. Yes.

"Q. Okay, and that's why - that's why we ask you if - if you wanted to talk or not?

"A. Yeah.

"Q. Okay, Do you want an attorney or not?

"A. I'm not sure, I'll have to talk to my parents, to my mother, I don't know.

"Q. Okay, do you want to see your mother?

"A. No, not really. Just answer questions whatever you want or ---

"Q. You just want to talk about the case, huh?

"A. I guess.

"Q. Get it all out?

"A. What - whatever you want is fine, right.

"Q. Okay. What we want is just you know, to find out the truth, what happened, you know and that's all, but again, we also want to protect your rights, and that's why we're going through what we have and what we're doing here. Can you scoot up a little bit here so everything (Unintelligible). Okay, then, my partner is Duane Rasure, he's going to be asking you some questions and anything - and at anytime, anytime during this, when we're talking to you, if you don't want to say anything, you just want to quit talking, you tell us, okay?

"A. Uh-huh.

"Q. You understand that?

"A. Yes.

"Q. Okay, and that's at any point?

"A. Alright."
(Peo. exh. 12, p. 2.)

Following this portion of the interrogation, appellant went on to describe in great detail his murder of his stepfather. (Id., at pp. 3-14.)

Respondent's Grandparents

Around 6:30 p.m. on the afternoon of the killing, respondent's maternal grandparents, Mr. and Mrs. Lovelace, who had heard of the killing, were at respondent's home. (RT 48-49.) Although the investigation was being carried out by the Los Angeles County Sheriff's Office, there were several Los Angeles police officers present, since the victim had been a member of that force. (RT 45, 170.) Mrs. Lovelace approached one of the Los Angeles police officers, identified herself as respondent's grandmother and asked to see respondent and his sister. (RT 49-51, 56.) She was told by the Los Angeles police officer that two juveniles were being interrogated and could not be seen for 24 hours. (RT 52.)

Sergeant Rasure was not present during this conversation. (RT 44.) Moreover, it was the policy of his department to let a parent communicate with an arrested juvenile upon request. (RT 45.) Mr. and Mrs. Lovelace and respondent's mother got a motel room nearby. (RT 83.) After hearing a report on the 11 o'clock news, Mrs. Lovelace called the sheriff's office and talked to Sergeant Rasure. (RT 83-84.) Sergeant

Rasure told Mrs. Lovelace that if she came to the station Deanna would be released to her. (RT 83-84.) When the Lovelaces went to the station, they asked to see respondent. (RT 53.) They were told respondent did not want to see anybody. (RT 53.) It was after 11 p.m. (RT 83-84.) The questioning of respondent had begun over an hour earlier at 10 p.m. (RT 40-41.)

The Trial Court's Ruling

The trial court ruled that the statement was admissible. (RT 89.) In so ruling the court stated,

> ". . . the totality of the situation indicates a knowing and intelligent waiver.
>
> "I have to take a number of things into consideration here. There is no doubt in my mind that the young man knew exactly where he was and what it was about, and he understood those rights.
>
> "He had a decision to make. Considering his situation, it was not a particularly easy decision to make. You can practically hear his mind working when he decided to do it.
>
> "Now, this kind of decision making is going to be somewhat reluctant most of the time, don't you think, when you

have to make an agonizing decision? And, that's what he was doing.

"I am quite convinced that that is the way it comes out. I have seldom heard a minor as conscientiously advised of his rights as I have in this instance. As a matter of fact, it is one of my criticisms of a number of people who deal with children, that they rattle off the rights like they were talking to adults. That's bad form.

"It is a good idea to paraphrase and go over it and ask certain questions. And, that was done here.

"This was a good job of giving the rights, in my opinion. And, as I say, the law was complied with more than substantially in my opinion, and that statement is admissible." (RT 88-89.)

ARGUMENT

I

THE MIRANDA EXCLUSIONARY RULE BASED ON THE REQUIREMENT OF SPECIFIC ADVISEMENTS AND WAIVERS OF RIGHTS HAS NOT BEEN EXPANDED BY THIS COURT

"Confessions remain a proper element in law

> enforcement. Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence." (Miranda v. Arizona (1966) 384 U.S. 436, 478.)

When this Court rendered its far-reaching decision in Miranda v. Arizona, supra, it did so in the context of a philosophy that while involuntary confessions are constitutionally unacceptable, the admission of a suspect's statement that is the product of a free will is an acceptable and useful tool of law enforcement. As such the rule announced in Miranda attempted to balance the community's need for effective enforcement of the criminal law and the individual's rights under the Fifth and Fourteenth Amendments.

This Court has never acted so as to expand the requirements set forth in Miranda as necessary prerequisites of a valid confession. Indeed, this Court has specifically rejected any expansion of the requirements in cases dealing with juveniles. (Fare v. Michael C., supra, 442 U.S. 707, 725.) However, the California Court of Appeal, Second Appellate District, Division Four, has, by its opinions in the case at bar, made such expansions. In a factual situation where the explicit requirements of Miranda were met, the California court nevertheless suppressed the confesion because the juvenile involved had not first talked with some adult relative or other advisor. This has resulted in an

improper expansion of the holding of this Court in Miranda.

While over the years this Court has made certain exceptions to the exclusionary rule set forth in Miranda it has never expanded the number of advisements or waivers originally required by Miranda. The rule of Miranda, establishing specific warnings and waivers as a prerequisite to the admission of statements obtained during custodial interrogation, was criticized by the dissenters in that opinion because of its excessive rigidity. Justice Clark warned that: "[s]uch a strict constitutional specific inserted at the nerve center of crime reduction may well kill the patient." (Miranda v. Arizona, supra, 384 U.S. 436 at pp. 500-501 (Clark, J., dissenting).) In recent years, this Court has ruled that the rigid exclusionary rule established in Miranda v. Arizona, supra, is not without exceptions. In Michigan v. Tucker (1974) 417 U.S. 333, 446-452, this Court held that not all fruits of a confession obtained in violation of the requirments laid down in Miranda would be required to be suppressed where a suspects's confession was obtained prior to.

It is noteworthy that while this Court has made exceptions to the exclusionary rule imposed by Miranda, the Court has in no case expanded the number of advisements and waivers originally required by Miranda. Nor has this Court ever held as a matter of law that a necessary prerequisite to any juvenile confession is a discussion between that

juvenile and some adult relative or advisor. Indeed in Fare v. Michael C., supra, 442 U.S. 707, 725, this Court specifically ruled no special test need apply in a situation where the question is whether a juvenile has properly waived his rights before confessing. (Fare v. Michael, supra.) However, the California Court of Appeal ignored this holding and issued an opinion greatly expanding the requirements of Miranda in dealing with a juvenile. Since this Court has specifically refrained from making such a gross expansion of the Miranda rules, it was improper for the California Court to attempt to do so as a matter of federal constitutional law. (Oregon v. Hass (1975) 420 U.S. 714, 719.)

1. In Judging the Validity of any Waiver of Miranda Rights, the Totality of the Circumstances Must be Evaluated by the Courts.

As this Court made clear in Gallegos v. Colorado and Fare v. Michael C., the voluntariness of a juvenile confession is to be judged by the totality of the circumstances surrounding the confession. (Gallegos v. Colorado (1962) 370 U.S. 49, 55; Fare v. Michael C., supra.) This Court had made it clear that no one factor controlled but that each of the surrounding circumstances had to be evaluated in light of the other circumstances. (Id.)

Moreover, this totality of the circumstances test is to be used in evaluating waivers in Miranda rights.

(Schneckloth v. Bustamonte (1973) 412 U.S. 218, 226.) The California Supreme Court had independently recognized this as the proper test to be applied. (People v. Lara (1967) 67 Cal.2d 365, 383-384; People v. Johnson (1969) 70 Cal.2d 541, 556-558.)

2. The California Court of Appeal, Second Appellate District, Division Four Failed to Comply With the Writ of Certiorari Issued by this Court. The California Court's Opinions Result in an Impermissible Extension of Miranda v. Arizona by Holding that Talking With an Adult Relative was a Necessary Prerequisite of a Valid Juvenile Confession Even in Those Situations Where the Juvenile States He Does Not Wish to Speak Either With His Parents or an Attorney.

In Fare v. Michael C., supra, 442 U.S. 707, 725, this Court specifically held that the determination of whether an individual's confession was admissible turned upon an inquiry "into the totality of the circumstances surrounding the interrogation." (Id., at p. 725.) This Court then went on to note that this test is applicable even in a juvenile case.

> "We discern no persuasive reasons why any other approach is required where the question is whether a juvenile has waived his rights, as opposed to whether an adult has done so." (Id.)

This Court also carefully reviewed the development of the Miranda rule pointing out how an attorney occupies a critical position in our legal system because of his "unique ability to protect the Fifth Amendment rights of a client undergoing custodial interrogation." (Fare v. Michael C., supra, 442 U.S. at p. 719.) Hence, a request to speak with an attorney is an invocation of a suspect's Fifth Amendment rights. (Id., at p. 719.) However, this Court noted that a request to see some other person who is not a lawyer does not have this same effect primarily because that person is not "able to offer the type of independent advice that an accused would expect from a lawyer . . . ." (Id., at p. 721.) This Court noted that the presence of such a nonlegal trained individual "is not necessary, . . . for the protection of the legal rights of the accused, juvenile or adult." (Id., at p. 722.) The court noted that any more stringent rule would cut the Supreme Court's ruling in Miranda completely loose from its own explicitly stated rationale. (Id., at pp. 722-723.) Finally, the court made clear that even a request by a juvenile to speak with someone he considered trustworthy could not be taken as a request sufficient to trigger "the rigid rule of Miranda." (Id., at p. 723.)

Applying the holding of the United States Supreme Court in Fare v. Michael C., supra, to the case at bar, leads to one inescapable conclusion: respondent knowingly and intelligently waived his Miranda rights. Under the

totality of the circumstances test, it is clear that the trial court's ruling was correct. The analysis of the circumstances must center on what was known either to the juvenile or to the questioning officers and what transpired. Events occurring outside of the presence or knowledge of respondent can have no bearing on his waiver of his Miranda rights.

However, the California Court of Appeal failed to follow this clear mandate. The appellate court admitted that the juvenile never asked to speak to his grandparents (In re Patrick W., supra, 104 Cal.App.3d 618-619), and further admitted that the officers questioning the juvenile were unaware of the request of the grandparents. (See Appen. D, p. 1.) However, the court suppressed the confession because the juvenile was never given the choice of speaking to his grandparents. (See Appen. D, p. 1.) The court held that given his young age, respondent had to talk to an adult before giving a valid confession. (See Appen. D, p. 1.) The Court of Appeal never explained how the Los Angeles Sheriff's officer could offer respondent a choice that they did not know existed.3/

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3. While society has a right to demand the highest possible conduct on the part of its law enforcement officers, no court has ever gone as far as requiring the police to be omniscient. Yet, that is the effect of the case at bar. The respondent's grandparents had

In order to avoid the clear holding of Fare, the Court of Appeal construes the opinion in Fare as narrowly as is possible. The court construes Fare to apply only in situations involving a juvenile requesting to talk to a probation officer. (In re Patrick W., supra, 104 Cal.App.3d 618-619.) Such a narrow perspective, relying on the most detailed factual question is unpersuasive. The decision of the United States Supreme Court in Fare sets forth the appropriate test to be applied whenever the issue of a juvenile waiver of rights is concerned. (Fare v. Michael C., supra, 442 U.S. at p. 725.) The approach of the California Court of Appeal fails to come to grips with the ruling in Fare. Thus the California Court of Appeal, Second Appellate District, Division Four, failed to comply with the writ of certiorari issued by this Court. Rather than genuinely reconsidering its first opinion in light of Fare v. Michael C., supra, the California Court handed down a second opinion in direct contradiction the clear principles of law set forth by this Court in Fare v. Michael C. As such this Court

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Footnote 3 continued.

approached Los Angeles Police officers, friends of the victim who happened to be at the scene of the crime. (RT 45, 170.) Yet the investigation was being carried out by the Los Angeles Sheriff's Office. Officers of that agency were unaware of the request until after the confession had been obtained. (RT 40-41, 84.)

should again grant certiorari so as to correct the repeated errors of the California appellate court.

The ruling of the California appellate court results in a gross extension of the Miranda rules previously enunciated by this Court. It must be remembered that in the case at bar the trial court specifically held that the minor had made a knowing and intelligent waiver of his rights. (RT 89.) The Court of Appeal in its opinions did not disagree with this finding. In fact the Court of Appeal specifically stated that the juvenile had demonstrated an understanding of the Miranda admonitions given to him. Yet, the court went on to reverse stating that a 13 year old juvenile could not comprehend the meaning or consequences of his statements without first talking to an adult relative. (In re Patrick W., supra, 84 Cal.App.3d at 526.) This holding ignores not only the finding of the trial court, but also is in direct conflict with the prior rulings of this Court. The opinions of the California Court of Appeal make the age of the respondent the sole determining factor in its decision. Such a test ignoring the totality of the circumstances, and centering only upon the chronological age of the respondent clearly violates the rules set forth in Gallegos v. Colorado, supra, 370 U.S. 49, 55, and Fare v. Michael C., supra, 442 U.S. 707, 725. The Court of Appeal's opinions thus isolate one factor out of the totality of the circumstances and make it the necessary prerequisite of a valid juvenile confession. This is a vast expansion of the rules of law laid

down by this Court in Miranda, Gallegos and Fare v. Michael C.

It should be noted that it was the policy of the Los Angeles County Sheriff's Office to allow a parent to see an arrested juvenile upon request. (RT 45.) There is no showing in the record that respondent's mother even asked to see her son. Moreover, the only time respondent's grandparents asked members of the sheriff's office to see respondent was over an hour after respondent had confessed. (RT 40-41, 84.) To hold that the police officers' failure to honor the grandparents' request, made long after the confession, is a factor that supports the suppression of respondent's confession, simply defies all logic.

Finally, even assuming arguendo that the officers had refused a request made to them before the confession, that fact alone is not sufficient basis to suppress the confession. In People v. Schwartzman (1968) 266 Cal.App.2d 870, a juvenile was being questioned by the police about a crime. His father, a police officer, came to the station and asked to see his son. The officers refused. (Id., at pp. 885-886.) The court upheld the confession stating,

> ". . . The minor's capacity to waive his right to an attorney is a function of his individual intelligence, competence, and ability, unrelated to the desires or intentions of his parents.

". . . . . .

"The failure of the police to respond to the father's request does not affect the validity of . . . [the] waiver. . . ." (Id., at pp. 885-886.)

The Court in Schwartzman correctly recognized that where a juvenile does not request to see an adult, the validity of the confession is then dependent on what is going on around him and in his mind and not on factors of which he is totally unaware. So, in the case at bar, since there is a positive finding in the record that appellant's waiver of his Miranda rights was knowing and intelligent, it was improper for the Court of Appeal to reverse solely because respondent had not talked to an adult before making his confession.

Thus it is clear that the rulings of the California Court of Appeal, Second District, Division Four, were incorrect and has resulted in a great expansion of the holding of this Court in Miranda, Gallegos and Fare v. Michael C. It is well settled that a state may not as a matter of federal constitutional law impose greater Miranda restrictions when this Court specifically refrains from imposing them. (Oregon v. Hass, supra, 420 U.S. 714, 719.) Petitioner submits in a case such as this when a lower court has read Miranda too broadly and has refused to correct its error even when directed to do so by a writ from this Court, it is most appropriate for this Court to grant a

writ of certiorari and decide the case on the merits in order to insure that the rules adopted in Miranda, Gallegos and Fare v. Michael C., are confined to the express terms and logic of the original opinion that Miranda is not cut "loose from its own explicitly stated rationale." (Beckwith v. United States (1976) 425 U.S. 341, 345.)

II

THE OPINIONS BELOW ARE BASED EXCLUSIVELY ON FEDERAL AUTHORITY

Both decisions rendered in this case by the California Court of Appeal, Second Appellate District, Division Four were based exclusively upon federal authority. As such this case is properly the subject of review by this Court on writ of certiorari.

In its first opinion the Court of Appeal solely relied upon the federal Constitution, Miranda v. Arizona, supra, 384 U.S. 436, 478, and Gallegos v. California, supra, 370 U.S. 49, 55. There are no references to state statutory or constitutional grounds. (In re Patrick W., supra, 84 Cal.App.3d 520, 524-528.) The state case relied upon by the Court of Appeal, People v. Lara, supra, is in turn based solely upon the federal constitution, Miranda and Gallegos. (See People v. Lara, supra, 67 Cal.2d 365, at pp. 381-391.)

In its second opinion the California Court of Appeal relied upon

these same authorities but also implied its opinion was somehow independently justifiable under the decision of the California Supreme Court in People v. Burton (1971) 6 Cal.3d 375. (In re Patrick W., supra, 104 Cal.App.3d at pp. 617-619.) However, as dissenting Judge Burke so aptly noted, Burton is based entirely upon the Fifth Amendment to the United States Constitution and on the decision of the United States Supreme Court in Miranda v. Arizona, supra, 384 U.S. 436. (In re Patrick W., supra, at pp. 623-624.)

In Burton, the California Supreme Court stated:

> "[W]hen, . . . a minor is taken into custody and is subjected to interrogation, without the presence of an attorney, his request to see one of his parents, made at any time prior to or during questioning, must, in the absence of evidence demanding a contrary conclusion, be construed to indicate that the minor suspect desires to invoke his Fifth Amendment privilege." (People v. Burton, supra, at pp. 383-384.)

As such Burton is based solely on federal authority, in fact, this was the conclusion of Justice Rehnquist in ruling on California's request for a stay in Fare v. Michael C., supra, 439 U.S. 1310, 1311 (in chambers opinion, Rehnquist, J., sitting as circuit judge).

Indeed, even the cases Burton relies upon are themselves based entirely upon federal authorities. (See People v. Ireland (1969) 70 Cal.2d 522, 536-537; People v. Randall (1970) 1 Cal.3d 948, 958.) Of course the seminal case in California is People v. Dorado (1965) 62 Cal.2d 338. In that decision the California Supreme Court cited two decisions of this Court, Massiah v. United States (1964) 377 U.S. 201 and Escobedo v. Illinois (1964) 378 U.S. 478, and stated:

> "Since we must faithfully discharge our duty to apply to the instant case the Constitution of the United States as interpreted by the Supreme Court of the United States, we must follow these recent decisions." (People v. Dorado, supra, at p. 345.)

Therefore, it can be seen that all of the cases relied upon by the California Court of Appeal are themselves based upon federal constitutional authority. For the foregoing reasons, petitioner submits that the opinions below are based exclusively upon federal constitutional authority and are thus properly the subject of review by the Court on writ of certiorari.

CONCLUSION

Thus it is clear that the California Court of Appeal, Second Appellate District, Division Four has

failed to comply with the writ of certiorari issued by this Court in the case at bar. Instead the California court has issued two opinions greatly expanding the rules governing juvenile confessions, erecting federal constitutional rules this Court has specifically refrained from promulgating. Therefore, petitioner submits that a writ of certiorari should be issued to review the decision of the California Court of Appeal, Second Appellate District, Division Four.

Respectfully submitted,

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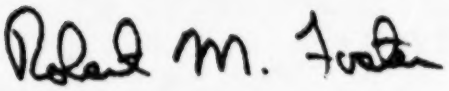

ROBERT M. FOSTER,
Deputy Attorney General

Attorneys for Petitioner

A P P E N D I X A

[Filed September 1, 1978]

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

2 CRIM NO. 31806
(Sup.Ct.Juv.No. J813375)

IN RE PATRICK STEVEN W.,

A Person Coming Under the Juvenile Court Law.

THE PEOPLE,

Petitioner and Respondent,

v.

PATRICK STEVEN W.,

Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. David N. Fitts, Judge. Reversed.

Jerry D. Whatley and Lonnie B. Springer, Jr. for Appellant.

Evelle J. Younger, Attorney General, Jack R. Winkler, Chief Assistant Attorney General, Daniel J. Kremer, Assistant Attorney General, Harley D. Mayfield and Robert M. Foster, Deputy Attorneys General, for Petitioner and Respondent.

A petition was filed in the Los Angeles County Juvenile Court alleging that Patrick Steven W., 13 years of age, was a minor coming within the provisions of section 602 of the Welfare and Institutions Code in that he had committed the crime of murder. The minor appeals from the order of the court sustaining the petition, declaring the minor a ward of the court and committing him to the California Youth Authority.

In February 1977, the minor lived in Acton, California, with his mother, a sister Deanna, age 11, and his stepfather, Edward Bullis, a Los Angeles police officer, who had married the minor's mother in 1973. Patrick and his stepfather did not get along well together, had often quarreled, and on some occasions there had been physical mistreatment of the boy by his stepfather. The mother worked in Los Angeles and was away from home much of the time.

On the afternoon of February 22, 1977, Deanna complained to her stepfather that the minor had fought with her and caused her to cry. The stepfather became so angry that he choked the minor into unconsciousness. On the following day the minor got his stepfather's rifle

and loaded it while both parents were gone, telling his sister that he wanted to kill the stepfather, but then he "chickened out" and put the rifle away before Mr. Bullis came home. On the next day, however, after the parents had left, the minor told his sister to stay home from school, said he was going to kill Mr. Bullis and again obtained the rifle, loaded it and took a practice shot with it while waiting for the stepfather to return from work. As Bullis arrived home about 5:30 p.m. and started to enter the house through a sliding glass door he was shot fatally in the chest. The minor then took money from the decedent's pocket, buried the body and left home with his sister, spending the night on a hill nearby.

On the following day the minor's school principal received a phone call from a motorist who had picked up the minor and his sister hitchhiking on the freeway. The minor had admitted they were running away from home and the motorist had left them at an off-ramp in Saugus. The principal drove to that location, saw the children and told them he would drive them back to school. The minor was reluctant to get in the car saying that "he just couldn't go back, and he couldn't face his mother" and finally stating that he had shot and buried his stepfather. The minor and his sister were then persuaded to enter the principal's car and he drove them to the school where they were taken into custody by sheriff's deputies. Decedent's body had been discovered in the meantime by Los Angeles police officers who had gone

to the Acton home in response to Mrs. Bullis' report that decedent and the two children were missing. The minor's maternal grandparents had also arrived in Acton by the time the body was found. They were told that the two children were being taken to the Antelope Valley Sheriff's office in Lancaster for questioning. The grandparents arranged to stay at a motel in Palmdale with the mother that night and informed a sheriff's deputy where they would be. Earlier the grandparents had been told that they would not be able to visit the minor for a period of 24 hours, although this statement was probably not made by a sheriff's representative but rather by one of the Los Angeles police officers who had gone to the Bullis home voluntarily to help in the search for their fellow officer.

The minor was interviewed by Detectives Rasure and Villarreal at approximately 10:00 p.m. that night in the Antelope Valley Sheriff's station, some three and one-half hours after being taken into custody. After being properly advised of his Miranda rights and indicating his understanding of them the minor was asked if he wanted to talk about the case. He replied, "I guess, if its gonna be best." Deputy Villarreal then went on to explain that this was a matter for the minor to decide, that the officers did not want to force him or coerce him in any way and the minor again indicated his understanding. The conversation then continued as follows:

"Q. Okay, and that's why - that's why we ask you if - if you wanted to talk or not?

"A. Yeah.

"Q. Okay, Do you want an attorney or not?

"A. I'm not sure, I'll have to talk to my parents, to my mother, I don't know.

"Q. Okay, do you want to see your mother?

"A. No, not really. Just answer questions whatever you want or ---

"Q. You just want to talk about the case, huh?

"A. I guess.

"Q. Get it all out?

"A. What - whatever you want is fine, right."

The minor then made full and detailed confession of the killing of his stepfather, which was admitted in evidence at the adjudication hearing.

The minor now contends that his confession should not have been admitted in evidence because the prosecution failed to show that there had been a valid waiver of his right against self-incrimination. In the absence of

such waivers statements made by a minor while in custody are inadmissible in a juvenile court proceeding under Welfare and Institutions Code section 602. (In re Roderick P. (1972) 7 Cal.3d 801.) Also, a minor's request to see one of his parents when subjected to custodial interrogation is to be construed as an indication that the minor desires to invoke his Fifth Amendment rights and questioning must then immediately cease. (People v. Burton (1971) 6 Cal.3d 375.)

Although our Supreme Court in People v. Lara (1967) 67 Cal.2d 365, refused to require an adult's consent as a condition to a minor's waiver of his privilege against self-incrimination, it did state that such consent is to be desired and should be obtained whenever feasible. Whether or not such adult advice was sought and obtained for a minor is a factor to be considered in determining the admissibility of a minor's confession to the police. As the United States Supreme Court stated in reference to a 14-year-old whose confession was held inadmissible: "The prosecution says that the boy was advised of his right to counsel, but that he did not ask either for a lawyer or for his parents. But a 14-year-old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police. . . . He cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions. He would have no way of knowing what the consequences of his confession were without

advice as to his rights-from someone concerned with securing him those rights-and without the aid of more mature judgment as to the steps he should take in the predicament in which he found himself. A lawyer or an adult relative or friend could have given the petitioner the protection which his own immaturity could not." (Gallegos v. Colorado (1962) 370 U.S. 49, 54.)

In the present case the minor indicated uncertainty when asked by the deputy whether he wanted an attorney, saying that he would have to talk to his mother. When asked if he wanted to see her he (understandably) said "No, not really" and stated further, with some encouragement from the form of the officer's question, that he was willing to talk about the incident. At least one of the deputies present (Sgt. Rasure) while the questions were asked knew that the minor's maternal grandparents were with the mother at a nearby motel, a fact apparently unknown to the minor, and also knew that they were greatly concerned about the minor and his sister. Shortly after the minor had completed his confession telephone arrangements were made with the grandparents to pick up the sister from the sheriff's station, and this was done. Under these circumstances we perceive no reason for the sheriff's deputies not seeking the presence of the grandparents as responsible adults to counsel with the minor before he was questioned. We think that the recommendation in People v. Lara, supra, 67 Cal.2d 365, that such procedure be followed comes close to being a mandate

when dealing with a 13-year-old boy suspected of murder. The minor had already voiced difficulty in facing his mother, whom he rightly assumed to be highly distraught at the time. If he had been made aware of his grandparents' concern and that they were near there is good reason to believe that he would have sought their advise before responding to the officers' questions.

Also, although the minor showed understanding of the Miranda admonitions as explained to him by the deputies he would not, of course, have been likely to fully "comprehend the meaning and effect of his statement" (People v. Lara, supra, 67 Cal.2d at p. 383); for example, its use in this case to refute an expert's opinion concerning the minor's diminished mental capacity to commit the crime charged. To those who argue that the same thing can be said of an adult whose confession is used against him, the simple answer is that the courts have always given more zealous protection to minors' rights, under both criminal law and civil, because of their relative helplessness when dealing with adults by reason of immaturity. We therefore hold that the minor's confession in the present case was inadmissible on the totality of the circumstances present. Since the admission of a confesion obtained in violation of Miranda principles constitutes reversible error per se (In re Michael C. (1978) 21 Cal.3d 471, 478) the order declaring the minor a ward of the court must be reversed. Even without the rule of In re Michael C., supra, reversal would have been required because,

although there was other evidence admitted which showed that the minor had killed his stepfather, the court relied on the confession in rejecting a claim of the minor's diminished mental capacity.

Since a rehearing will be required in this case we address ourselves to the minor's further contentions on appeal that evidence of the circumstances pertaining to the crime should not be admissible to show his knowledge that the act was wrongful when committed, that statements made by the minor in respect to that issue are not admissible and that the court should determine that issue separately before receiving other evidence on adjudication pursuant to Welfare and Institutions Code section 602.

Penal Code section 26(1) provides that children under the age of 14 years are incapable of committing a crime "in absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness." This requirement applies as well to juvenile court proceedings under section 602 of the Welfare and Institutions Code charging the minor with having committed a crime. (In re Gladys R. (1970) 1 Cal.3d 855.)

"Only if the age, experience, knowledge, and conduct of the child demonstrate by clear proof that he has violated a criminal law should he be declared a ward of the court under section 602." (In re Gladys R., supra, 1 Cal.3d at p. 867.) To prohibit evidence

as to the child's conduct on the occasion in question would often result in omission of the only truly relevant evidence on the subject. In the present case, for example, we would be left with evidence that the minor, 13 years of age, is a bright boy whose mother told him it was wrong to hurt people and that in her opinion the minor knows that it is wrong to shoot another person -- hardly the "clear proof" required by Penal Code section 26(1). Turning to evidence of the minor's conduct on the occasion in question, however, and the two days preceding, there are numerous circumstances which in our opinion were relevant to show that the minor knew the wrongfulness of his act at the time it was committed and collectively satisfy the "clear proof" requirement of section 26(1).

It should be noted also that the minor himself presented psychiatric testimony on the issue, to the effect that the minor was a victim of transient psychosis at the time of the killing and unaware that his act was wrongful. The doctor's opinion included a consideration of the circumstances surrounding the event, without which such evaluation would be of little or no value. The judge as fact finder rejected the evidence, as he had a right to do. (Pen. Code, § 1127(b).) Certainly, however, the apparently intentional killing of his stepfather by a 13-year-old boy is so abhorrent and abnormal that psychiatric evaluation would be essential, and that would necessarily include consideration of and testimony concerning the minor's conduct at the time of the crime charged.

Although most of the above facts were proved by witnesses other than the minor, his declarations can also be considered for the purpose. (In re Tanya L. (1977) 76 Cal.App.3d 725.) The case of In re Michael B. (1975) 44 Cal.App.3d 443, involving a nine-year-old charged with a burglary of an automobile is not to the contrary, but simply holds that the child's admission that he he knew such conduct was wrong was not sufficient by itself to meet the burden of proof under the facts of that case.

Finally, on the Penal Code section 26(1) issue in this case there is no reason to hear and rule on that issue before hearing other evidence on the adjudication issue, since the same evidence of the minor's conduct and declarations would be admissible on each, as stated above. In this respect it is unlike the social study report concerning a minor, which may contain a great deal of legally incompetent background material that might tend to be prejudicial and therefore must be read only after determining the adjudication issue. (See In re Gladys R., supra, 1 Cal.3d at pp. 859-862.)

The order is reversed.

CERTIFIED FOR PUBLICATION

JONES, J.*

We concur:

KINGSLEY, Acting P.J.

JEFFERSON (Bernard) J.

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* Assigned by the Chief Justice of California.

A P P E N D I X B

[Filed October 25, 1978]

ORDER DUE
October 31, 1978

ORDER DENYING HEARING

AFTER JUDGMENT BY THE COURT OF APPEAL

2nd District, Division 4,
Crim. No. 31806

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

IN BANK

IN RE PATRICK W., A PERSON COMING UNDER THE JUVENILE COURT LAW

PEOPLE

v.

STEVEN W.

Respondent's petition for hearing DENIED.

Clark, J., and Richardson, J., are of the opinion that the petition should be granted.

BIRD
Chief Justice

A P P E N D I X C

[Filed April 15, 1980]

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

2 CRIM NO. 31806
(Sup.Ct.Juv.No. J813375)

IN RE PATRICK STEVEN W.,

A Person Coming Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

PATRICK STEVEN W.,

Defendant and Appellant.

APPEAL from an order of the Superior Court, Los Angeles County. David N. Fitts, Judge. Reversed.

Jerry D. Whatley and Lonnie B. Springer, Jr. for Defendant and Appellant.

George Deukmejian, Attorney General, Robert H. Philibosian, Chief Assistant Attorney General, Daniel J. Kremer, Assistant Attorney General, Jay M. Bloom and Robert M. Foster, Deputy Attorneys General, for Plaintiff and Respondent.

The minor was found by the juvenile court to be a person coming under section 602 of the Welfare and Institutions Code in that he had committed murder in violation of section 187 of the Penal Code. He was committed to the Youth Authority; he has appealed; we reverse.

The case for the People[1]/ is that, angry at his father, a police officer, the minor had intentionally shot and killed him. Alerted by school authorities and other persons, deputy sheriffs arrested the minor and took him to the station for interrogation. Admittedly they gave him the formal Miranda rights and also asked if he desired to talk to the "parents." Quite understandably, the minor declined to face his mother, whom he had just widowed. It is the contention of the minor here that, since his grandparents were available and had sought to speak to the minor, the deputies were under an

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1. Since our former opinion sets forth in full detail the facts of this case, we here give only a summary of them in such detail as it required for this opinion.

obligation to ask him if he desired to talk to them and that the deputies had not done so.

This is the second time that this case has been before this court. On September 1, 1978, we held that the order of commitment must be reversed because of that failure. (In re Patrick W. (1978) 84 Cal.App.3d 520.) On October 23, 1978, our Supreme Court denied hearing. The People then sought certiorari and, on June 25, 1979, the United States Supreme Court remanded the case to us "for further consideration in the light of Fare v. Michael C. (1979) 442 U.S. _____, [61 L.Ed.2d 197]."

In In re Michael C. (1978) 21 Cal.3d 471, our Supreme Court had held that a confession obtained from a minor after his request to see his probation officer had been denied, was obtained in violation of the minor's Miranda rights. It was that holding which the United States Supreme Court reversed, primarily on the ground that a probation officer, by virtue of his dual allegiance, was not the kind of person on whom a minor was entitled, within the purpose of Miranda, to rely.

It is clear that the United States Supreme Court's decision in Michael C. rests on facts distinguishable from those before us on this appeal. The grandparents here did not have the official ambivalence that the Supreme Court saw in the Michael C. case. They fall more in the group of which our Supreme

Court said, in People v. Burton (1971) 6 Cal.3d 375, at page 382, "person to whom he [a minor] normally looks" for help.2/ Admittedly there is language in the Supreme Court opinion that might be interpreted as indicating that that court would take a similar view of a right to see grandparents. However, in its action in the case before us, the United States Supreme Court did not reverse our judgment on the authority of Michael C. but merely directed us to reconsider our opinion "in the light of" that opinion. We have obeyed that direction.

It is now well settled that, although a California court must give to a defendant at least as full rights as the Constitution of the United States, as construed by the United States Supreme Court, requires, a California court may, in applying our own state constitutional requirements, afford to a defendant rights greater than those required by the federal Constitution. In the context of this case, a requirement of warnings similar to those required by Miranda, were earlier required by the Supreme Court of California. (People v. Dorado (1965) 62 Cal.2d 338.)

As we have pointed out below, the California Supreme Court has held that Miranda extends to a right to consult

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2. It is here immaterial to speculate over whether minor would have exhibited the same reluctance to facing his grandparents as he had to facing his mother. The choice was his; he was never given that choice.

with parents; the decision in Michael C. does not hold that that interpretation of Miranda is federally incorrect.

In the present status of this case and of the California decisions, we conclude that it is our duty, as an intermediate appellate court, to follow and apply what we regarded, and still regard, as the applicable California law. If our Supreme Court decides, in light of the language in Michael C., either to overrule or to distinguish Burton, it will then face the issue, not here properly before us, of whether it should construe our own state Constitution as requiring, in a California prosecution, the right of consultation herein involved.

The People argue that the minor's confession to the deputies was immaterial since he had, earlier, made a confession to a school official. However, there was a serious issue as to a defense of diminished capacity and the record makes it clear that the confession to the deputies was heavily relied on by the People to rebut that defense. Under those circumstances, as we said in our earlier opinion, the admission of the confession to the deputies cannot be said, beyond a reasonable doubt, to be nonprejudicial.

The judgment is reversed.

CERTIFIED FOR PUBLICATION

KINGSLEY, Acting P.J.

JEFFERSON (Bernard), J.*

I agree with the result and the reasoning set forth in the opinion of Justice Kingsley. However, I would add additional reasons for reaching the result that the minor's confession was obtained by the police in violation of his constitutional rights.

In the case at bench we are dealing with a 13-year-old minor and he stands in a different light than that of an adult or of an older minor. I have had occasion to express my views of the law on this subject recently, but I feel impelled to reiterate these views in this case now before us.

I

Any Interrogation of a 13-Year-Old Minor in the Absence of Counsel is Invalid Irrespective of Miranda Warnings and an Asserted Waiver Thereof

I am unable to accept the assumption endorsed by the dissent in the instant case that a 13-year-old minor stands in the position of an adult insofar as the principle of law is concerned that a suspect may waive his constitutional right to remain silent and to have an attorney pursuant to the requirements of Miranda. Such a principle of law should have no application to a 13-year-old

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* Assigned by the Chairperson of the Judicial Council.

minor. Irrespective of what the Supreme Court of the United States might hold with respect to the rights of minors under the federal Constitution, I am of the opinion that the California Constitution should be interpreted to preclude the application of a Miranda waiver to any minor who is not more than 13 years of age. It is an erroneous assumption to couch a principle of law in terms that such a minor is capable of understanding the constitutional rights involved in the Miranda warnings and in holding that he has the capacity to intelligently and knowingly waive such rights.

It is my view that such a waiver of constitutional rights should be held to be impermissible with respect to such a minor. I would interpret the California Constitution to provide that no interrogation by the police should be permitted of a minor 13 years of age or younger in the absence of counsel. It should be mandatory that an attorney be appointed for any such minor, and that no interrogation of such minor by a police officer be permitted unless there is a waiver by the minor upon advice of counsel appointed for such minor. It is my position that a mandatory appointment of counsel for a minor no more than 13 years of age should be a prerequisite under the California Constitution for the validity of any waiver of the right to remain silent.

I recognize that in some respects the doctrine of Miranda has been relaxed, rather than strengthened. Thus,

if it is believed that a victim's life hangs in the balance, a defendant may be interrogated about the victim's whereabouts without giving the Miranda warnings. "While life hangs in the balance, there is no room to require admonitions concerning the right to counsel and to remain silent." (People v. Dean (1974) 39 Cal.App.3d 875, 882; see, also, People v. Modesto (1965) 62 Cal.2d 436, 446; People v. Riddle (1978) 83 Cal.App.3d 563, 572.) But in the situation presented in the case at bench of a 13-year-old minor, the Miranda protection should be strengthened by a mandatory requirement of appointment of counsel before any attempt is made by police officers to secure statements from such a minor. Since no counsel was appointed for the minor in the case at bench, I would hold that the minor's confession should be deemed inadmissible under the appropriate provisions of the California Constitution.

II

The Totality Approach Set Forth in Fare and Espoused by the Dissent Mandates a Holding that There Was No Waiver of Fifth Amendment Rights

The dissent sets forth portions of the record to sustain the view that the 13-year-old minor before us made an intelligent waiver of his Miranda rights. Even under the principle that a 13-year-old minor has the capacity to waive his Miranda rights, including the right of counsel -- a rule of law to

which I do not subscribe -- the record before us does not support the conclusions reached by the dissent. I draw totally different inferences and conclusions from this same record.

The record of the entire conversation between the minor and the officers, which lasted approximately 30 minutes, does not "reflect[s] an atmosphere free of intimidation and coercion." On the contrary, this record convinces me that the minor's confession was obtained by "intimidation and coercion." I can see no basis for a holding that the trial judge could reasonably find that the minor made a knowing and voluntary waiver of his Miranda rights. In People v. Jimenez (1978) 21 Cal.3d 595, the high court established the burden-of-proof rule that when a defendant raises the issue that his confession was involuntary, the burden is upon the prosecution to prove beyond a reasonable doubt that the confession was voluntary as a preliminary fact to the admissibility of the confession.

It is my view that, in the case at bench, the record establishes, as a matter of law, that the evidence is insufficient to support a finding, beyond a reasonable doubt, of a Miranda waiver by the minor. The judgment below, therefore, must be reversed, even if Fare v. Michael C. (1979) 442 U.S. ___, were to be considered as controlling over

People v. Burton (1971) 6 Cal.3d 375, discussed in the lead opinion herein.

JEFFERSON (Bernard), J.*

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* Assigned by the Chairperson of the Judicial Council.

BURKE (Michael L.), J.*

I respectfully dissent. My reading of the decision of the United States Supreme Court in Fare v. Michael C. (1979) ___ U.S. ___, 61 L.Ed.2d 197, brings forth but one conclusion: It is an impermissible extension of the Miranda rules to reverse the order of commitment of the minor in this case because the officers before questioning him never informed him that his grandparents were nearby and available to talk with him, and never specifically asked him if he wanted to talk to them.

Under the ruling of the court in Fare v. Michael C., supra, the question of whether a waiver of Miranda rights is free and intelligent -- be it a waiver by an adult or one by a juvenile -- is to be resolved on the totality of the circumstance surrounding the waiver. Using the court's language in Fare, "The totality of the circumstances approach is adequate to determine whether there has been a waiver even where the interrogation of juveniles is involved." (61 L.Ed.2d at p. 212.)

Fare v. Michael C., supra, involved the refusal of the arresting officers to honor the minor's request to see his probation officer before questioning him. The California Supreme Court, in In re Michael C. (1978) 21 Cal.3d 471, 478, had held that, in the absence of strong evidence to the contrary, when a minor asks for his probation officer, he is invoking his privilege against self-incrimination and

questioning must cease until the request is honored. In reversing that decision, the court in Fare preliminarily observed:

"This Court, however, has not heretofore extended the per se aspects of the Miranda safeguards beyond the scope of the holding in the Miranda case itself. We therefore must examine the California court's decision to determine whether that court's conclusion so to extend Miranda is in harmony with Miranda's underlying principles." (61 L.Ed.2d at p. 207.)

The court then reasoned that to permit the extension of the per se aspects of the Miranda requirements where the minor's request was to see his probation officer "would impose the burdens associated with the rule of Miranda on the juvenile justice system and the police without serving the interests that rule was designed simultaneously to protect. If it were otherwise, a juvenile's request for almost anyone he considered trustworthy enough to give him reliable advice would trigger the rigid rule of Miranda." (Fare, 61 L.Ed.2d a p. 211.)

The court concluded: "We hold, therefore, that it was error to find that the request by respondent to speak with his probation officer per se constituted an invocation of respondent's Fifth Amendment right to be free from compelled self-incrimination. It therefore was also error to hold that because the police did not then cease interrogating respondent the statements he made during

interrogation should have been suppressed." (Fare, 61 L.Ed.2d at p. 212.)

The lead opinion would limit the applicability of the holding in Fare to its bare facts, namely, where there is a request by a minor to see a probation officer. They assert that the earlier holdings in the line of California cases culminating in People v. Burton (1971) 6 Cal.3d 375, are still good law and should be followed here under the theory that the California Constitution may be interpreted to afford to a defendant rights greater than those required under the federal Constitution.

However, nowhere in any of those cases do I find any indication whatsoever that the decisions were based on state constitutional requirements. Rather, they refer to the Fifth Amendment and Miranda.

In summing up its holding the court in Burton (which the lead opinion relies upon) said: "[W]hen . . . a minor is taken into custody and is subjected to interrogation, without the presence of an attorney, his request to see one of his parents, made at any time prior to or during questioning, must, in the absence of evidence demanding a contrary conclusion, be construed to indicate that the minor suspect desires to invoke his Fifth Amendment privilege." (Emphasis added.) (People v. Burton, supra, at pp. 383-384.)

And the United States Supreme Court, in Fare v. Michael C., supra, 61 L.Ed.2d at p. 207, said of the California Supreme Court decision in that case: "We note at the outset that it is clear that the judgment of the California Supreme Court rests firmly on that court's interpretation of federal law."

Not only do all of the cases cited in the lead opinion rely on the United States Constitution, but so do each of the cases on which they are based. Even People v. Dorado (1965) 62 Cal.2d 338, decided before Miranda v. Arizona (1966) 384 U.S. 436, is grounded on cases from the United States Supreme Court and the federal Constitution.

A state is free as a matter of its own law to impose greater restrictions on police activity than those which the United States Supreme Court holds to be necessary based upon federal constitutional standards. (Cooper v. California (1967) 386 U.S. 58, 62; Sibron v. New York (1968) 392 U.S. 40, 60-61.) However, "a State may not impose such greater restrictions as a matter of federal constitutional law when this Court specifically refrains from imposing them." (Oregon v. Hass (1975) 420 U.S. 714, 719.) (Emphasis in original.)

In any event, I still cannot see how Burton or any of the cases cited therein provide support for the position taken in the lead and concurring opinions. The minor in the present case never made any request to see his grandparents. By reversing because the

officers did not summon the relatives to consult with the minor before questioning him, notwithstanding that no request was made for their presence, the holding of this case extends Miranda beyond the line of cases cited and beyond any decision my research has disclosed.

I believe that the United States Supreme Court, in remanding this case for reconsideration in the light of the Fare decision, has in effect directed that this court reconsider its decision using the totality of the circumstances approach enumerated in Fare.

The court in Fare explained that: "The totality approach permits -- indeed, it mandates -- inquiry into all the circumstances surrounding the interrogation. This includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights. . . .

"[W]here the age and experience of a juvenile indicate that his request for his probation officer or his parents is, in fact, an invocation of his right to remain silent, the totality approach will allow the court the necessary flexibility to take this into account in making a waiver determination. . . ." (Fare, 61 L.Ed.2d at pp. 212-213.)

Application of the totality approach requires a more detailed statement of the facts than the summary set

out in the lead opinion. I quote from the statement of the facts as outlined in the original opinion filed in this case, which is found in In re Patrick W. (1978) 84 Cal.App.3d 520, at pages 523-524, as follows:

"In February 1977, the minor lived in Acton California, with his mother, a sister Deanna, age 11, and his stepfather, Edward Bullis, a Los Angeles police officer, who had married the minor's mother in 1973. Patrick and his stepfather did not get along well together, had often quarreled, and on some occasions there had been physical mistreatment of the boy by his stepfather. The mother worked in Los Angeles and was away from home much of the time.

"On the afternoon of February 22, 1977, Deanna complained to her stepfather that the minor had fought with her and had caused her to cry. The stepfather became so angry that he choked the minor into unconsciousness. On the following day the minor got his stepfather's rifle and loaded it while both parents were gone, telling his sister that he wanted to kill the stepfather, but then he 'chickened out' and put the rifle away before Mr. Bullis came home. On the next day, however, after the parents had left, the minor told his sister to stay home from school, said he was going to kill Mr. Bullis and again obtained the rifle, loaded it and took a practice shot with it while waiting for the stepfather to return from work. As Bullis arrived home about 5:30

p.m. and started to enter the house through a sliding glass door he was shot fatally in the chest. The minor then took money from the decedent's pocket, buried the body and left home with his sister, spending the night on a hill nearby.

"On the following day the minor's school principal received a phone call from a motorist who had picked up the minor and his sister hitchhiking on the freeway. The minor had admitted they were running away from home and the motorist had left them at an off-ramp in Saugus. The principle drove to that location, saw the children and told them he would drive them back to school. The minor was reluctant to get in the car saying that 'he just couldn't go back, and he couldn't face his mother' and finally stating that he had shot and buried his stepfather. The minor and his sister were then persuaded to enter the principal's car and he drove them to the school where they were taken into custody by sheriff's deputies. Decedent's body had been discovered in the meantime by Los Angeles police officers who had gone to the Acton home in response to Mrs. Bullis' report that decedent and the two children were missing. The minor's maternal grandparents had also arrived in Acton by the time the body was found. They were told that the two children were being taken to the Antelope Valley sheriff's office in Lancaster for questioning. The grandparents arranged to stay at a motel in Palmdale with the mother that night and informed a sheriff's deputy where they would be.

Earlier the grandparents had been told that they would not be able to visit the minor for a period of 24 hours, although this statement was probably not made by a sheriff's representative but rather by one of the Los Angeles police officers who had gone to the Bullis home voluntarily to help in the search for their fellow officer.

"The minor was interviewed by Detectives Rasure and Villarreal at approximately 10 p.m. that night in the Antelope Valley sheriff's station, some three and one-half hours after being taken into custody. . . ."

The interview with the minor was tape recorded and the tape was introduced in evidence and played for the trial court. A transcript of the tape was also prepared and introduced as an exhibit. The transcript reveals the following questions and answers relevant to the Miranda issue:

"Q. Patrick Steven _____ [last name deleted]. How old are you?

"A. 13.

"Q. Okay. I'm gonna write before we start, you know that this interview will be tape recorded?

"A. Yes, I do.

"Q. And the recording is going on now? Okay, I got to give you your Admonition and Waiver of Rights

and I'm gonna go very slow so you understand and we understand that you understand each and every right that you have okay?

"A. Yeah.

"Q. Alright. Number 1: That you have the right to remain silent. Anything you say can and will be used against you in a court of law. You know what I said so far?

"A. Yes.

"Q. You understand that you have that right to remain silent, and anything you say can and will be used against you?

"Q. You have the right to talk to a lawyer before we talk to you and to have him present while we talk to you. And if, you know, you don't want an attorney you can have your mother or any, you know, legal guardian with you. You understand that?

"A. Yes.

"Q. Okay. You don't, you know, okay, as long as you understand you can have your mom or an attorney, someone with you to protect your rights. Okay, if you cannot afford to hire a lawyer one will be appointed to represent you before any questioning, free of charge. Do you understand what I've just explained to you?

"A. Yes.

"Q. Okay. With -- I know you say yes, and so on, but, tell me what I just told you, okay?

"A. You told me that I don't have to talk to you without my lawyer or my mom or somebody like that.

"Q. Uh-huh.

"A. And I don't -- I don't have to answer questions without somebody present.

"Q. Do you want to talk about the case?

"A. I guess, if it's gonna be best.

"Q. Well, that's up -- up to you, you know, you have your rights to be protected, you know, you have the rights and so on, and also that -- that uh, the reason we explain these things to you is so you know what your rights are.

"A. Uh-huh.

"Q. So, and that's why we ask you if you can (Unintelligible) that we don't want to force you or coerce you in any form or way.

"A. Yeah.

"Q. You -- you understand that?

"A. Yes.

"Q. Okay, and that's why -- that's why we ask you if -- if you wanted to talk or not?

"A. Yeah.

"Q. Okay. Do you want an attorney or not?

"A. I'm not sure, I'll have to talk to my parents, to my mother, I don't know.

"Q. Okay, do you want to see your mother?

"A. No, not really. Just answer questions whatever you want or --

"Q. You just want to talk about the case, huh?

"A. I guess.

"Q. Let it all out.

"A. What -- whatever you want is fine, right.

"Q. Okay. What we want is just you know, to find out the truth, what happened, you know and that's all, but again, we also want to protect your rights, and that's why we're going through what we have and what we're doing here. Can you scoot up a little bit here so everything (Unintelligible). Okay,

then, my partner is Duane Rasure, he's going to be asking you some questions and anything -- and at anytime, anytime during this, when we're talking to you, if you don't want to say anything, you just want to quit talking, you tell us okay?

"A. Uh-huh.

"Q. You understand that?

"A. Yes.

"Q. Okay, and that's at any point?

"A. Alright.

"Q. Okay, uh, have you got any -- anything there, uh, Duane?

"Q. RASURE: You said earlier, do you go by the name Patrick?

"A. Uh-huh.

"Q. Okay, Patrick, you said earlier that uh, you understand your rights, you knew about all that stuff?

"A. Yes.

"Q. Where did you learn those kind of things?

"A. From my father.

"Q. He explained to you about right and how --

"A. No.

"Q. This all works?

"A. Well, uh, he gave me a pamphlet, uh, like a card.

"Q. This card that you --- I'm sorry go ahead.

"Q. We're talking.

"A. Well, he had many of these cards, and he gave me one and I read my rights and I asked him questions and he explained.

"Q. I see. He has -- how long have you lived with him?

"A. Five (5) years.

"Q. Five (5) years. He has taught you a little bit about the law?

"A. A little bit."

The minor then proceeded to tell in detail how he planned and carried out the killing and burial of his stepfather. The interview consumed approximately 30 minutes.

The transcript of the interview with the minor depicts an intelligent, fairly sophisticated, albeit youthful, boy of 13. He told the officers that his stepfather had talked to him about the law, and had answered his questions and explained to him about Miranda rights.

According to the minor, his stepfather had given him a card containing the Miranda rights. The transcript shows that the officers slowly and carefully went over the rights with the minor, and assured themselves that he understood his rights by asking that he explain his understanding of the rights, which he did in an intelligent, knowledgeable fashion. The record of the entire conversation between the minor and the officers, which consumed approximately 30 minutes, reflects an atmosphere free of intimidation and coercion. Those conditions and circumstances certainly do not lend themselves to the conclusion that the minor was either incapable of understanding or waiving his privilege against self-incrimination.

Considering all of the circumstances, including the fact that the minor had earlier that day, before being taken into custody, confessed to his school principal, I believe the conclusion of the trial judge that the minor understood and waived his privilege against self-incrimination was correct. The minor's confession was therefore properly admitted against him.

I would affirm.

BURKE (Michael L.), J.*

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* Assigned by the Chief Justice of California.

APPENDIX D

[Filed May 1, 1980]

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

2 CRIM NO. 31806
(Sup.Ct.Juv.No. J813375)

ORDER DENYING REHEARING

IN RE PATRICK STEVEN W.,

A Person Coming Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

PATRICK STEVEN W.,

Defendant and Appellant.

THE COURT:*

The People's petition for rehearing is denied. As the Attorney

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* KINGSLEY, Acting P.J.; JEFFERSON (BERNARD), J.**

General admits in his supplemental brief, both the mother and grandmother had asked the police to see the minor, at a time before his confession was obtained. That the officers to whom they talked, and who refused the request, did not communicate it to the interviewing officer is immaterial.

I would grant rehearing for the reasons set forth in my dissent.

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* BURKE (MICHAEL L.), J.**

** Assigned by the Chief Justice of California.

APPENDIX E

[Filed June 12, 1980]

ORDER DUE
June 13, 1980

ORDER DENYING HEARING

AFTER JUDGMENT BY THE COURT OF APPEAL

2nd District, Division 3, [sic]
Crim. No. 31806

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

IN BANK

IN RE PATRICK W., A PERSON COMING UNDER THE JUVENILE COURT LAW

PEOPLE

v.

STEVEN W.

Respondent's petition for hearing DENIED.

Clark, J., Richardson, J., and Manuel, J., are of the opinion that the petition should be granted.

BIRD
Chief Justice